IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 15TH OCTOBER 2007 / 23RD ASWINA 1929

Crl.MC.No. 3157 of 2007()

CC.732/2003 of JUDL. MAGISTRATE OF FIRST CLASS COURT, PARAPPANANGADI

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PETITIONER: ACCUSED NO.1

MALAYIL PURUSHU @ PURUSHOTHAMAN
S/O. MUNDA, VALLIKKUNNU AMSOM
THIRURANGADI TALUK

BY ADV. SRI.P.S.SREEDHARAN PILLAI
SMT.C.G.PREETHA
SMT.RANI DIOTHIMA P.

RESPONDENTS: COMPLAINANT

STATE OF KERALA,REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

BY PUBLIC PROSECUTOR ADV.SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 12/10/2007, THE COURT ON 15/10/2007 PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.3157 of 2007

Dated this the 15th day of October 2007

O R D E R

The petitioner is the first accused in a prosecution for offences punishable inter alia under Section 353 read with 149 I.P.C. The crux of the allegations against the petitioner is that he was member of an unlawful assembly of persons on 1/7/1996 at 4 p.m and the said unlawful assembly in prosecution of its common object had attacked one police official.

2. Investigation was complete. The matter stands listed for trial to this date before the learned Magistrate, it is submitted. At this stage, the petitioner has rushed to this court with the prayer that the proceedings against the petitioner may be quashed and the further proceedings before the learned Magistrate may be stayed, invoking the powers under Section 482 Cr.P.C.

3. What is the reason? According to the petitioner, in respect of the incident which took place on 1/7/1996 at 4 p.m, another crime was registered. Investigation was conducted. Trial was held and the petitioner as well as some other co-

accused were found guilty, convicted and sentenced by the learned Magistrate. Inasmuch as on the identical allegation,the petitioner was tried, found guilty and convicted, the petitioner does not deserve to stand trial again, it is submitted. The matter, admittedly, stands posted for trial to this day before the learned Magistrate. Altogether there are 33 accused persons each in both cases, it is submitted. The other accused have not raised any objections. The petitioner did not raise any objections at any earlier stage though the crime was allegedly committed as early as in 1996 and the case has been registered as early as in 2003 as can be ascertained from the number of the C.C pending - C.C.No.732/03.

4. The prayer is to invoke the jurisdiction under Section 482 Cr.P.C. The other case was registered as Sessions case 106/01 and admittedly the judgment of conviction was pronounced on 2/9/2003.

5. I am called upon to invoke and exercise the extraordinary inherent jurisdiction under Section 482 Cr.P.C. One who seeks such extraordinary relief must also be shown to have acted justly and fairly. No explanation whatsoever is

offered as to why the petitioner did not come earlier before this court and has waited so long to file this application on 11/10/2007 when the trial was listed to take place today, that is 15/10/2007. I am in these circumstances, not at all inclined to invoke the jurisdiction under Section 482 Cr.P.C.

6. This Criminal Miscellaneous Case is accordingly dismissed. I may hasten to observe that the petitioner shall be at liberty to raise all contentions in the trial before the learned Magistrate including the contention that the petitioner is not liable to stand trial in view of the earlier judgment in S.C.No.106/01.

7. With the above observations, this Criminal Miscellaneous Case is dismissed.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007